Nos. 311-312

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IN THE

Supreme Court of the United States

October Term, 1948

JOSEPH McGOWAN,

Petitioner,

—v.—

J. H. WINCHESTER & Co., INC.,

Respondent.

PASQUALE BURO,

Petitioner,

—v.—

AMERICAN PETROLEUM TRANSPORT CORP.,

Respondent,

—v.—

GEORGE R. TOLLEFSEN & M. A. TOLLEFSEN, copartners, doing business as TOLLEFSEN BROTHERS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

JACOB RASSNER,
Attorney for Petitioners.

NATHAN BAKER,
THOMAS O'ROURKE GALLAGHER,
With him on the Petition.

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TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioners respectfully pray for a writ of certiorari to review the decision of the United States Circuit Court of Appeals for the Second Circuit in the above case.

Summary Statement of the Matter Involved

The petitioner, Pasquale Buro, seeks to review a judgment by the United States Circuit Court of Appeals for the Second Circuit affirming the judgment of the United States District Court for the Eastern District of New York of a judgment dismissing his action against American Petroleum Transport Corp., on motion before trial, and the petitioner, Joseph McGowan seeks to review a judgment by the United States Circuit Court of Appeals for the Second Circuit affirming the judgment of the United States District Court for the Southern District of a judgment setting aside a jury's verdict in favor of petition and dismissing his complaint against J. H. Winchester & Co. Inc.

Both actions involved the same question of law, namely, whether a War Shipping Administration General Agent could be held liable for a tort committed aboard a vessel of the United States of America operated under a General Agency Agreement with the War Shipping Administration.

The Facts

The facts can best be expressed by quoting from the opinion by the United States Circuit Court of Appeals for the Second Circuit, dated June 24, 1948, in the cases of *Joseph McGowan* v. *J. H. Winchester & Co. Inc.* and *Pasquale Buro* v. *American Petroleum Transport Corp.*, not officially reported as yet, unofficially reported in 1948 A. M. C. 1133, in the following language, quoting from page 1134:

Both plaintiffs were employees of contractors engaged on behalf of the United States to repair vessels owned and operated by the Government. The defendants, by virtue of contracts with the United States acting by and through the War Shipping Administration, were the general agents for the vessels involved. McGowan, a rigger employed by the Seaboard Marine Repair Co., Inc., was engaged in operating a winch on the S. S. *William A. Graham*, while Buro was a scaler employed by Tollefsen Brothers aboard the S. S. *William Penn*. The injury to McGowan occurred in the course of his work aboard the *Graham* when, as a result of negligence on the part of the ship's crew, a metal shackle attached to a gantline struck him, causing the injury of which he complains. Buro, on the other hand, was injured as a consequence of the negligence of the *Penn's* owner in failing to fit a proper platform at the point where the ladder from a manhole on deck ended in the curved top of a shaft alley. It appears that he was descending into a tank when he slipped and fell because of this described negligence.

The Questions of Law

In affirming the judgment of the District Court, the Circuit Court of Appeals decided that a ship operator under a General Agency Agreement with the War Shipping Administration of the United States of America was immune from suit by a person negligently injured aboard a vessel, so operated by said steamship company.

This decision is contrary to the decisions by this Court in the cases of *Hust* v. *Moore-McCormick Lines, Inc.*, 328 U. S. 707, *Caldarola* v. *Thor Eckert & Co.*, 332 U. S. 155,

Brady v. *Roosevelt Steamship Company*, 317 U. S. 575, as well as the decision of the United States Circuit Court of Appeals for the Second Circuit in the case of *McAllister* v. *Cosmopolitan Shipping Co.*, not reported as yet, decided July 23, 1948, unofficially reported in 1948 A. M. C. 1307.

Reasons for Allowance of the Writ

The Circuit Court of Appeals for the Second Circuit has decided a question of law of widespread importance to persons injured aboard a vessel and shipowners in a way probably untenable and in conflict with all authority.

This decision bars a person injured aboard a vessel from maintaining an action at law or in Admiralty predicated upon unseaworthiness or negligence of a vessel and negligence of a crew, which is in conflict with the law as laid down by this Court since the *Brady* case, *supra*.

Said decision gives immunity to ship operators who are the very persons charged with the duty of safeguarding people employed aboard a vessel, operated by it in fact, and absolves such operator from the consequences of its tortious acts. Such a decision, if permitted to stand would result in grave injustice and deny to honest litigants their day in Court on the merits.

WHEREFORE, your petitioners respectfully pray that a Writ of Certiorari issue to review the decision below.

Dated, September 24, 1948.

Respectfully submitted,

JOSEPH McGOWAN
PASQUALE BUBO
Petitioners

By JACOB RASSNER,
Attorney for Petitioners.

NATHAN BAKER,
THOMAS O'ROURKE GALLAGHER,
With him on the Petition.

Certificate of Counsel

I hereby certify that in my judgment the foregoing petition is well founded and that it is not interposed for delay.

JACOB RASSNER,
Attorney for Petitioners.